

DEBTS RECOVERY TRIBUNAL-II, DELHI

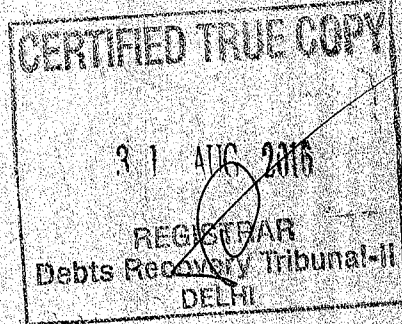
Item No.45

OA. 344/10	SBI	Vs	R.N. INFRA. COMM.
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Dated : 25.05.2016

Present – Sh. Arjun Harkauli, counsel for the applicant bank.
Sh. Anand Kumar Singh, proxy counsel for Sh. Prakash Kumar,
counsel for the defendant no. 2.
Sh. Muddu alongwith Sh. Rajul Shrivastav, counsel for the
defendant no. 4 & 6.

Heard both the parties. For pronouncement of judgment
posted to 05.07.2016.



(Signature)
(G. V. Raju)
Presiding Officer,
DRT-II, Delhi

DEBTS RECOVERY TRIBUNAL-II, DELHI
4th FLOOR JEEVAN TARA BUILDING,
PARLIAMENT STREET, NEW DELHI.
PRESIDING OFFICER: MR.G.V.K.RAJU

O.A. No.344 of 2010
Dated: 05.07.2016

State Bank of India

Branch Office at:
Jeevan Deep Building,
Second Floor, 8,
Parliament Street,
New Delhi – 110 001.

...Applicant.

Versus

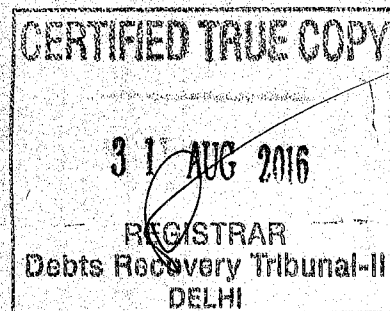
1. M/s R.N. Infracommunications Pvt. Ltd.
Through its Managing Director,

Regd. Office at:
B.103, Vishramtika, Plot No.5,- A
Sector 3, Dwarka,
New Delhi – 110 075

Also at:
SCO-21, Sector 15, Part-II,
Gurgaon, Haryana.

2. Shri Krishna Nanada,
Director,
M/s R.N. Infracommunication Pvt. Ltd.
B-103, 10th Floor, Plot no.5A,
Sector 3, Vishrantika Apartments,
New-Delhi.

Also at:
SCO-21, Sector 15, Part-II,
Gurgaon, Haryana – 122001.



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3. Shri Vikas Jain,
Director,
M/s R.N. Infracommunication Pvt. Ltd.
B-103, 10th Floor, Plot no.5A,
Sector 3, Vishrantika Apartments,
New-Delhi – 110075.

Also at:

SCO-21, Sector 15, Part-II,
Gurgaon, Haryana – 122001

Also at:

K-11/3, DLF Phase-II,
Gurgaon, Haryana.

4. Shri Jagannath Sarangpari,
Director,
M/s R.N. Infracommunication Pvt. Ltd.
B-103, 10th Floor, Plot no.5A,
Sector 3, Vishrantika Apartments,
New-Delhi – 110075.

Also at:

SCO-21, Sector 15, Part-II,
Gurgaon, Haryana – 122001

Also at:

8-2, 408, Road no.6, Banjara Hills,
Hyderabad.

5. M/s Enares Infranet (P) Ltd., a Company,
Through its Managing Director,
SCO-21, Sector 15, Phase-II,
Gurgaon, Haryana.
6. M/s U-Foam Pvt. Ltd., a Company,
Through its Managing Director,
B-14, Industrial Estate, Sanath Nagar,
Hyderabad – 500018.



...Defendants.

**APPLICATION UNDER SECTION 19 OF THE RECOVERY OF
DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS**

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ACT, 1993, FOR RECOVERY OF Rs.6,93,80,309.32 AS ON 30.11.2010 WITH PENFDENTE LITE AND FUTURE INTEREST, COSTS, CHARGES AND EXPENSES ETC.

Present: Shri Arjun Harkauli, counsel for the applicant bank.
 Shri Prakash Kumar, counsel for defendants no.1, 2, 3 & 5.
 Shri Lakshmi Kumaran & Shri Sridharan, counsel defendants no.4 & 6.
 ✓ *D. Mudda vijai and Rajul Shrivarkana also for R-426.*

JUDGMENT

Note: Correction is made as per order date 14.7.2016 passed by MA No 65/16.

1. The original applicant State Bank of India filed this O.A. against the defendants for recovery of Rs.6,93,80,309.32 with future interest @ 15% per annum from the date of filing of the O.A. till realization.

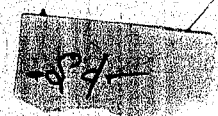
2. Brief case of the applicant bank, as seen from averments of the O.A., is as follows:

The applicant bank submits that D1 furnished requisite resolutions dated 29.04.2006, 17.05.2006, 6.11.2007 and 13.02.2008 in respect of the credit facilities granted to it. All the credit facilities are secured by personal guarantee furnished by D2 to D4 and corporate guarantee by D5 and D6. On 15.05.2006, credit facilities are sanctioned as follows:

Limits	Amount (Rupees in crores)
CC (bills)	5.00
Total Fund Based Working Capital.(FBWC)	5.00
Letter of Credit	10.00
Bank guarantee	5.00
Total Non Fund Based	15.00
Total NFB + FB	20.00

On 17.03.2007, the following credit facilities are granted:

	Limits	Amount (Rupees in crores)
a.	CC (bills)	5.00



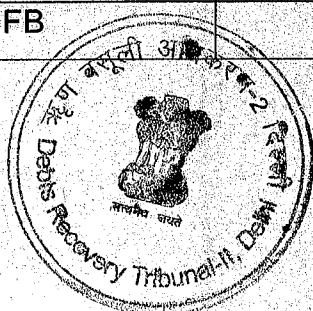
b.	CC (stocks) within (a)	(5.00)
	Total FBWC	5.00
c.	Letter of credit	10.00
d.	Bank guarantee	5.00
	Total NFB	15.00
	Total Non Fund Based + Fund based.	20.00

On 6.11.2007, the following credit facilities are granted:

Limits	Amount (Rupees in crores)
CC (Hyp)	10.00
Total FBWC	10.00
Total FB	10.00
Letter of credit	2.5
Bank guarantee	7.5
Total Non-Fund based limits	10.00
Total Non Fund Based + Fund Based.	20.00

Again D1 approached for sanction of credit facility and now the following limits are sanctioned on 12.02.2008:

Limits	Amount (Rupees in crores)
CC (Hyp)	10.00
SIL	3.00
Total FB	13.00
Letter of Credit	2.5
Bank guarantee	7.5
Total NFB limits	10.00
Total NFB + FB	23.00



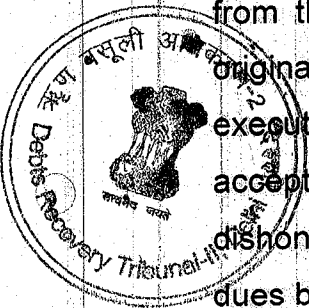
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3. The applicant bank submits that the defendants executed loan agreement, guarantee documents and hypothecation of goods and assets etc. for availing the loan. Further, the defendants were admitting their liability of outstanding. Further, D1 made part payments towards the liquidation of the outstanding and after availing the loan, the defendants made default and as per the statement of account maintained by the applicant bank in their regular course of business, an amount of Rs.6,93,80,309.32 is due with future interest @ 15% per annum. Hence, the O.A.

4. Defendant no.1 filed a written statement contending that the applicant bank unilaterally and without due knowledge, authority and diligence started interfering in the working capital requirements. The working capital facility of Rs.23 crores, which was sanctioned, was never operationalised and the collateral security of Fixed Deposit of Rs.4.4 crores was enhanced additionally to include three residential properties in Gurgaon/Delhi of market value of Rs.5 crores, Rs.2 crores and Rs.1 crore and the applicant bank also put an additional condition that one of the flat with highest value was to be mortgaged. The properties, which were offered as security with the applicant bank were unfortunately under loan from IDBI bank and the promoters prepaid the balance amount of loan and sought the original document of the property from the IDBI bank and when the IDBI bank returned the documents, the original document were missing. Though the defendants came forward to execute registered mortgage, but the applicant bank declined due to non-acceptance of the applicant bank for registered mortgage, letter of credit were dishonoured and several attempts were made to sell the building to clear the dues but could not rectify as the account was declared NPA as on 31.03.2010. The filing of the OA is illegal and not maintainable. The present OA is based on false claims, assumptions, presumptions, frivolous and false averments. The allegations levelled in the OA are invented for the purpose of filing the OA and the O.A. is liable to be dismissed.

5. D2 & D3 filed separate written statement on the same lines as filed by D1.

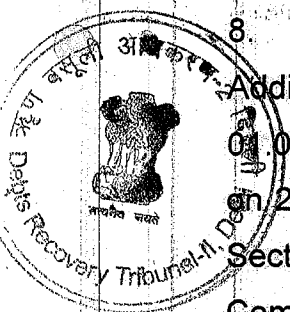
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6. D4 & D6 filed a separate written statement contending that the first credit facility availed by D1 on 01.06.2006 was secured by hypothecation of plant and machinery, collateral securities including a fixed deposit of Rs.1.5 crores, equitable mortgage of the office of office of D1 being SCO-21, Sector 15, Part-II, Gurgaon and the alleged personal guarantees of the Directors of defendant no.1 being D2 to D4 and the alleged corporate guarantees of D5 & D6. D4 submits that he was only an additional Director of D1. D4 gave the alleged personal guarantee on behalf of D1 Company on the basis of strong financial condition of D1 Company. D4 further submits that enhancement of first credit facility was sanctioned on 17.03.2007, which was availed on 06.11.2007 and the same was secured by hypothecation of entire current assets of defendant no.1 and collateral securities by way of a Fixed Deposit of Rs.4 crores and at that time D4 was not Director of D1 and therefore he was not aware of the extension of his guarantee. D4 further submits that since there was variance in terms of first credit facility, second credit facility was executed which was not done by the consent of D4. Therefore, D4 stood discharged from his liability under second credit facility.

7. D4 further contends that the second credit facility was enhanced to an overall limit of Rs.23 crores on 12.02.2008. D4 submits that the applicant bank has security of Rs.4 crores as Fixed Deposit, book debts, receivables, stocks etc. hypothecated and immovable property mortgaged, which are sufficient for the loan granted for D1.

8. D4 submits that he was only guarantor for first credit facility as Additional Director and D4 was an Additional Director in D1 Company from 01.06.2005 and D4 remained on Board as Additional Director till the next AGM on 29.09.2006 and his appointment was not renewed under the provisions of Section 260 of the Companies Act. D4 ceased to be the Director of D1 Company from 29.09.2006. As D4 was no longer in the business of D1 Company, the question of D4 extending the liabilities in favour of the applicant bank does not arise and the allegations of the applicant bank that D4 stood as guarantor for second and third renewals of the loan are false. D4 further



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submits that he was not additional director of the Company after 29.09.2006 and it is upheld by Gujarat High Court and the personal guarantee was given only in the capacity of Director of D1 Company and it was not intended to be continued after his retirement for enhancement by way of second credit facility and subsequent credit facilities.

9. D4 and D6 further contends that the principal defendant i.e. D1 and its present Directors D2, D3 and D5 continued the business and are financially viable and the Company also generated profits till 2009-2010 and the copy of balance sheet of D1 Company also reveals the same.

10. D4 further contends that the principal defendants received Rs.2,81,61,610/- on August 6, 2010 and Rs.3,56,48,928/- on September 10, 2010 as Income Tax refunds into a Standard Chartered Bank account of D1 Company and these amounts were diverted by D1 to D3. D4 brought it to the notice of the applicant bank by personally visiting one Mr. Jagdish Upadhyay, DGM at SBI Overseas Branch in July 2010 and copy of the statement of Standard Chartered Bank in the name of D1 is annexed to the representation. Further, D4 submits that D1 entered into a settlement agreement dated 09th May, 2012 with M/s Varsana Ispah of Gujarat and paid a sum of Rs.70 lacs. Similarly, D1 Company admitted pending arbitration with BSNL for which an award was passed for Rs.60 lacs.

D4 submits that defendant no.1 becoming non-functional after 2009-2010, defendants no.1 to 3 floated a separate Company M/s R.N. Infracommunications Pvt. Ltd. and there is collusion between the applicant bank and the principal defendants and have defrauded the answering defendants and the applicant bank failed to take any action against the principal debtors. The applicant bank failed to serve defendants no.1 to 3 started a new Company namely M/s R.N. Infracommunications Pvt. Ltd. as a partnership concern and as such the O.A. against D4 & D6 is not maintainable. D4 & D6 denied contrary allegations made in the O.A.

12. The applicant bank filed replication contending that that the defences raised by D1 to D3, D4 & D6 are untenable. The averments pleaded in the



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OA are reiterated and it is pleaded that defendants no.1 to 6 are jointly and severally liable for the claim of the applicant bank.

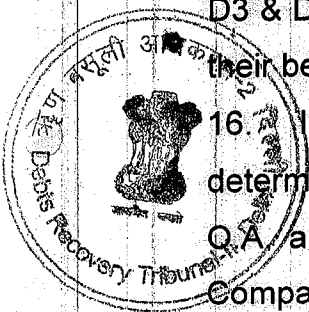
13. During enquiry, the applicant bank examined PW-1 to PW-3 and exhibited various documents as Exs.PW-1/1 to PW-1/20. PW-2/1 to PW-2/25 and PW-3/1 to PW-3/32. D4 & D6 produced their affidavits and exhibited documents Exs.DW-4/1 to DW-4/7 and Ex.DW-6/1. Subsequently, this Tribunal heard the parties and passed judgment dated 23.03.2015 allowing the O.A. for recovery of Rs.6,93,80,309.32 against defendants no.1 to 5 and dismissed the OA against D6 and issued RC accordingly against defendants no.1 to 5.

14. As against the same, D4 preferred Appeal No.13 of 2016 in OA No.344 of 2010 contending that D4 was not heard and as such the Hon'ble Debts Recovery Appellate Tribunal at Delhi by virtue of its order dated 26th February, 2016 set aside the judgment passed by this Tribunal and allowed the appeal. The case was remitted back to this Tribunal to afford opportunity of hearing to the appellant as also to the other respondents who are interested in advancing their submissions.

15. Again, this Court has heard the counsel for the applicant bank as well as counsel for D4. Though the other defendants filed their written statements but they did not adduce any evidence in support of the contentions of D1 to D3 & D5. Only D4 & D6 are the contesting defendants, who filed affidavits on their behalf and marked the documents.

16. In view of the rival contentions stated supra, now the points for determination are (i) Whether the applicant bank is entitled for recovery of the Q.A. amount from the defendants and (ii) Whether D4 was Director of D1 Company and extended his personal guarantee to the loan granted to D1 Company after 29.09.2006 and is liable for the claim of the applicant bank.

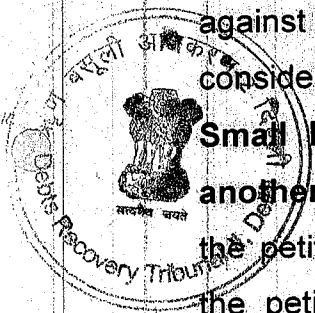
17. So far as D1 approaching the applicant bank and availing first loan facility is concerned, there is no dispute about the same and the evidence of PW-1 and PW-1/2 to PW-2/10 proves the same. So far as deed of guarantee for overall limit dated 01st June, 2006 is concerned, D4 admits the same and it



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is proved by Ex.PW-1/4. So far as the supplemental deed of guarantee dated 13th February, 2008 is concerned, it was executed by Shri Krishna Nanada, Shri Vikas Jain and also Shri Jagannath Sarangpari D4, but D4 denied the same. From Ex.PW-2/16, it does not reveal that D4 is the Director of D1 Company. It does not reveal that Ex.PW-2/16 is executed by D4 either as Director or guarantor of D1 Company. Further, supplemental deed of guarantee Ex/PW-2/17 was executed by D2 only and the renewal letter Ex.PW-2/24 is executed by D2 only. D4, to show that he is not Director of D1 Company and that he is not liable after 29.09.2006, he filed two documents i.e. judgments of Hon'ble High Court of Gujarat at Ahmedabad in Criminal Misc. Application No.12631 of 2010 wherein the Hon'ble High Court of Gujarat at Para 4.00 it is laid down that the petitioner has produced Form No.32 and extract of the Register of the Companies to prove that the petitioner was at the relevant time was Additional Collector of accused no.1 Company. At Para 5.01 of the same judgment, it is held that Mr.Jagannath Sarangpari (D4) is neither Chairman, Vice President nor Managing Director of accused no.1 Company. Thus, the complaint against the petitioner is for the offence under Section 138 of N.I. Act for dishonour of cheques issued by D1 Company. At Para 5.05 of the same judgment, it is held that in view of the facts and circumstances and considering the relevant allegations made in the complaint against the petitioner, original accused no.5 and taking the same as it is and considering the decision of the Hon'ble Apex Court in the case of **National Small Industries Corporation Limited Vs Harmeet Singh Paintal and another**, to continue the proceedings filed by the original complainant against the petitioner – original accused no.5 would be unnecessary harassment to the petitioner and abuse of process of law and therefore, the complaint deserves to be quashed and set aside.

16. The counsel for D4 has also relied upon a judgment of Hon'ble High Court of Bombay in Criminal Writ Petition No.617 of 2013 filed by SBI Global Factors Limited Vs. The State of Maharashtra and another. At Para 5 of the judgment, the Hon'ble High Court of Bombay held that the appointment of

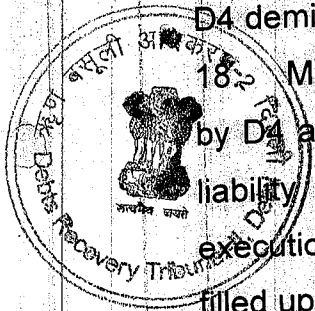


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respondent no.2 was an additional director, which was restricted for a period of a year in terms of Section 260 of the Companies Act. The record placed before the Hon'ble High Court by the learned counsel for the respondents from the office of Registrar of Companies at Delhi certified by Chartered Account illustrate the above referred director respondent no.2 Jagannath Sarangpani was not continued as a director. Thus, on the date of issuance of the cheque, apparently respondent no.2 was not a director in any capacity with original accused no.1. The Hon'ble High Court of Bombay has further held that the record produced illustrates that he has been prosecuted without any assertion of executing any guarantee agreement in the complaint petition.

17. Thus, both the judgments rendered by Gujarat High Court and Bombay High Court reveal that D4 was only an Additional Director for a period of one year in D1 Company i.e. till 29th September, 2006 and subsequently, he was not Director of the Company and it shows that D4 did not execute guarantees after his first guarantee in the year 2006 was executed. Admittedly, enhanced renewed guarantee was not executed by D6 and there is no corporate guarantee from D6 when the guarantee was renewed. Further, there is no reliable and trustworthy evidence to show that D4 is director in D1 Company after 29.09.2006 and executed guarantee in the capacity of Director. Thus, the applicant bank has failed to show that D4 & D6 are guarantors in view of D4 demitting the offence from 29.09.2006.

Moreover, the impugned guarantee does not reveal that it was executed by D4 as a Director for the benefit of D1 Company and as such no personal liability can be fastened against D4. Further D4 categorically denied the execution of Ex.PW-2/16. There is no endorsement on Ex.PW-2/16 that who filled up the form under Ex.PW-2/16. In the absence of signatures of PW-2 as witness to the document, examination of PW-2 to prove Ex.PW-2/16 is not sustainable. Moreover, it is mandated that common seal of the Company must be affixed in accordance with the Articles of Association of the Company at the portion of the common seal in Ex.PW-2/16. It seems that Ex.PW-2/16 is brought into existence with the signatures obtained on blank forms and, as



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such, no liability can be fastened on Ex.D4 basing on Ex.PW-2/16. In these circumstances, the contention of D4 that he is not a director of D1 Company and that he did not execute guarantee deed dated 13th February, 2008 is hereby upheld. Thus, the applicant bank has failed to make out any case to show that D4 was a director of D1 Company after 29th September, 2006 and executed guarantee for the benefit of D1 Company. In such circumstances, no liability can be fastened against D4 & D6. In view of the evidence of PW-1 to PW-3 and the documents Exs.PW-1/1 to PW-1/20. PW-2/1 to PW-2/25 and PW-3/1 to PW-3/32, the applicant bank is entitled for a decree against D1 to D3 & D5.

18. In view of my above holding that D4 is not Director of D1 Company after 29th September, 2006 and there is no possibility of D4 executing personal guarantee relied upon by the applicant bank, I am of the considered opinion that D4 & D6 are not liable for the claim of the applicant bank.

19. In the result:

- i. The O.A. is allowed against defendants no.1 to 3 and 5 for recovery of Rs.6,93,80,309.32 with simple interest @ 15% p.a. from the date of filing of the O.A. till realization and the amount shall be recovered from the hypothecated goods, movable and immovable properties of defendants no.1 to 3 & 5. The O.A. against defendants no.4 & 6 is hereby dismissed.
- ii. The applicant bank is directed to file revised statement of account before the Recovery Officer, DRT-II, Delhi.
- iii. Recovery Certificate be issued against defendants no.1 to 3 & 5 and be sent to the Recovery Officer, Debts Recovery Tribunal-II, Delhi.
- iv. The Registry is hereby directed to issue the free copy of this order and send the same to both the parties.



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- v. The defendants No.1 to 3 & 5 are directed to appear before the Recovery Officer, DRT-II, Delhi on 07th September, 2016.
- vi. File be consigned to records.

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(G.V.K.Raju)
Presiding Officer,
Debts Recovery Tribunal-II,
Delhi.

(Pronounced in open Court)
Dated: 05th July, 2016.

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|-------|-------------------------------------------|-------------|
| (i) | Number of the Application in the register | 2785/2016 |
| (ii) | Name of the Applicant | RAJU & H... |
| (iii) | The date, month and year of application | 06/01/16 |
| (iv) | Amount of copying fee | 1073545/- |
| (v) | Name of Copyist | TB |
| (vi) | Date fixed for issue of copy | |
| (vi) | Date on when copy was ready | 31/8/16 |
| (vii) | Date of notice applicant to (if issued) | |
| (ix) | Date of Delivery/Posting | |

